

Minutes of the July 19, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. A. Mavourneen Thompson; Hon. Andrew Ketterer.

Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:12 A.M., Chair Ginn Marvin convened the meeting. Ms. Ginn Marvin said that the Commission would return to Item 1 on the agenda after taking up Items 2 through 5 out of order. The Commission considered the following items:

Agenda Item #2 – Request for Investigation re: Constituent Newsletters/Sen. Philip L. Bartlett

Mr. Wayne said that Kate Brogan would speak on behalf of Sen. Philip Bartlett's campaign. Mr. Wayne said that Mr. Hoffses, who originally filed the request for an investigation, would not be present. Mr. Wayne said that Mr. Hoffses considered Sen. Bartlett's newsletter to be campaign-related and includes the Internet address of a partisan website, mainesenate.org. Mr. Wayne said that the legislative caucuses all have websites that promote their members. Mr. Wayne said that in three of the four caucus websites he reviewed, there is no campaign-related material included. Mr. Wayne said that the websites include information on the parties and pages devoted to each member. Mr. Wayne said that Mr. Hoffses also complained about a lack of paid-for disclaimer on the newsletters. Mr. Wayne said that the staff opinion was that this disclaimer was not required on a constituent newsletter, only on campaign materials. Mr. Wayne said that Sen. Bartlett's newsletters do not expressly advocate for his election. Mr. Wayne said that Mr. Hoffses believed that a survey included in the newsletters was being used for campaign purposes. Mr. Wayne said that Sen. Bartlett's response was that the survey was used to determine policy priorities and was not campaign-related. Mr. Wayne said that the Commission

has not previously been called on to determine whether constituent newsletters as a whole were campaign-related until the previous meeting.

Ms. Ginn Marvin said that the use of the Internet and the popularity of Clean Election funding were likely reasons for the increase in constituent newsletter complaints.

Kate Brogan said that she was at the meeting as legal counsel to the President of the Senate and not any campaign. Ms. Brogan said that the content of the newsletters was approved by the President and Secretary of the Senate. Ms. Brogan said that they checked newsletters for campaign-related content and the mailing was handled by the Senate. Ms. Brogan said that the mailing was not campaign-related in any way. Ms. Brogan said that there were 185 other constituent newsletters similar to Sen. Bartlett's, so any change made by the Commission would be substantial.

Ms. Ginn Marvin asked if the Senate had any rules on the timing of constituent mailings. Ms. Brogan said that the Secretary of the Senate sets the timetable for mailings. Ms. Brogan said that the intent is to get out the mailings as soon after the end of the session as possible, although the session sometimes ends close to when the primary election is held. Ms. Brogan said that the staff drafts content and the legislators select which content they wish to be included in their newsletters or draft content on their own.

Ms. Ginn Marvin asked if there was a 21-day deadline mentioned. Mr. Wayne replied that it was included in Paul Nixon's complaint against Rep. Lawrence Bliss. Ms. Gardiner said that the letter from the President of the Senate stated that mailings were sent out well in advance of the general election.

Ms. Brogan said there was no formal rule in the Senate for when mailings go out. Ms. Brogan said that the House may treat the mailings differently from the Senate.

Mr. Ketterer moved, and Ms. Thompson seconded, that the Commission adopt the staff recommendation to take no further action. Mr. Ketterer said that the newsletter does not

advocate for the election or defeat of a candidate, but the survey on public policy would only be useful if the candidate was reelected. Mr. Ketterer said that the newsletter was not a campaign piece in and of itself. Mr. Ketterer said that it was impossible to be entirely fair, as incumbents have the ability to hold press conferences and other powers not shared by challengers.

Ms. Thompson said that she agreed with Mr. Ketterer and the staff recommendation. Ms. Thompson said that as public servants, legislators have a responsibility to communicate with their constituents.

The Commission voted unanimously (3-0) to adopt the staff recommendation and take no further action.

Agenda Item #3 – Request for Investigation re: Constituent Newsletter/Rep. Lawrence Bliss

Mr. Wayne said that Mr. Nixon's complaint was that Rep. Bliss's newsletter contained a link to the House Democrats website and was mailed within 21 days of the primary election. Mr. Wayne said that the statute considers any communication sent within 21 days of an election that mentions a candidate to be an independent expenditure. Mr. Wayne said that this may not apply to Rep. Bliss, since he had no opponents in the primary election. Mr. Wayne said that the independent expenditure reporting requirement can be rebutted and that Mr. Bliss already did so by explaining in a letter that the newsletters were not campaign-related. Mr. Wayne said that the staff recommended no investigation into the complaint by Mr. Nixon.

Rep. Bliss said that he was present as a member of the legislature and not as a candidate. Rep. Bliss said that his communication with constituents included monthly public forums and a monthly e-mail on legislative activities. Rep. Bliss said that the constituent newsletters were paid for by the state. Rep. Bliss said it was best to send the newsletters at the end of the session so that constituents can be informed of what happened during the session. Rep. Bliss said that the newsletters are approved by the Clerk's office, and that his newsletter was the first in the

House to be approved and mailed. Rep. Bliss said that he had no opponent in the primary election.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to accept the staff recommendation and take no further action.

Agenda Item #4 – Request for Waiver of Late-Filing Penalty/George Thomson

Mr. Wayne said that George Thomson ran against Randall Greenwood in the primary election. Mr. Wayne said that Mr. Thomson was privately financed, while Mr. Greenwood was publicly financed. Mr. Wayne said that Mr. Thomson was required to file a 101% report within 48 hours of exceeding \$1,519 in either contributions or expenditures. Mr. Wayne said that on May 22, Mr. Thomson was asked by his printer whether he wished to do a second mailing. Mr. Wayne said that Mr. Thomson said that he was not aware of his approval of the request being considered an obligation. Mr. Wayne said that the 101% report should have been filed on May 24, but was not filed until 8 days later. Mr. Wayne said that Mr. Greenwood was delayed in receiving matching funds because of the late reporting. Mr. Wayne said that the maximum possible penalty was \$12,000, which the staff considered to be too high in that case. Mr. Wayne said that a penalty of \$253.70 would be appropriate. Mr. Wayne said that Mr. Thomson was responsive when notified that he was late in filing the report. He came into the office the day after he received a voice mail from the staff and wanted to remedy any problem that may have occurred. Mr. Wayne said that, by June 1 when Mr. Thomson did file the report, Mr. Greenwood had only spent \$57.15 of the more \$1,500 in public funds he had already received at that point, so he was not disadvantaged by the delay in receiving matching funds. Mr. Wayne said that Mr. Thomson was a first-time candidate and that he made a conceptual error.

Mr. Thomson said that he had planned on producing two mailings with Spectrum Printing. Mr. Thomson said that he did not have to pay for the mailings until the day before they went out. Mr. Thomson said that his treasurer informed him that the obligation was not incurred until he mailed the check, but he later found out that that was not true. Mr. Thomson said that he wanted

to honor the intent of the law, being that an obligation results from the intent to pay for goods or services.

Ms. Ginn Marvin asked if the second mailing went out. Mr. Thomson replied that it was sent on June 5. Mr. Thomson said that he used a credit card to pay for the mailing on June 3. Mr. Thomson said that he responded to a proof sent to him by the printer by saying in a phone call that it looked good, and that was how he ordered the mailing.

Ms. Thompson asked what the Commission's past practice had been in similar cases. Mr. Wayne said that after 2004, the Commission took obligations more seriously due to a problem with groups obligating expenditures without filing independent expenditure reports. Mr. Wayne said that the Commission clarified in 2005 that the definition of expenditure includes obligations. Mr. Wayne said that Mr. Thomson's phone call where he approved the proof may not be considered an order for the mailing. Mr. Wayne said that in the case of Rep. Dugay, the opponent was disadvantaged and Rep. Dugay was assessed a sizeable penalty. Mr. Wayne said that in most other cases, the penalties were between \$100 and \$200. Mr. Wayne said that \$253 was a proper amount for an unintentional error made in good faith.

Ms. Thompson asked if the staff needed to better explain to candidates that obligations count as expenditures. Mr. Wayne said that it was clear on the form that obligations must be reported. Mr. Wayne said that they could explain that in the Candidate's Guide and in trainings, but it was not always a top priority in the past. Ms. Thompson recommended that the staff include examples of past violations in the Candidate's Guide. Ms. Gardiner said that such examples should illustrate factual situations rather than possible penalty amounts.

Mr. Ketterer said that candidates must follow the rules, even if they are not explained by Commission staff. Mr. Ketterer said that there was a tendency among the parties recruiting candidates to leave out details on the reporting requirements. Mr. Ketterer said any lack of explanation is an error on the part of the party leadership rather than the Commission staff. Mr. Ketterer said that an obligation being included as an expenditure was not intuitive to someone who had not previously run as a candidate.

Mr. Ketterer asked how the staff determined their recommended penalty. Mr. Wayne said that it was half of the unreported amount on the 101% report.

Ms. Ginn Marvin said that some amount of leniency was appropriate in this case.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to assess a penalty of \$253.70 against George Thomson.

Agenda Item #5 – Request for Waiver of Late-Filing Penalty/Richard Wurfel

Mr. Wayne said that Mr. Wurfel was not a professional lobbyist and was a firefighter by trade. Mr. Wayne said that Mr. Wurfel missed the deadline for several reports and has paid a \$100 penalty. Mr. Wayne said that Mr. Wurfel wishes to request a waiver of the second penalty for late reporting due to personal difficulties.

Mr. Wurfel said that he had spent 29 years as a firefighter and union representative. Mr. Wurfel said that he had assisted firefighters with healthcare issues and volunteered to lobby the legislature on the subject. Mr. Wurfel said that he did not appear at the February Commission meeting due to family issues. Mr. Wurfel said that he was working 130 hours a week. Mr. Wurfel said that he had asked Martha Demeritt for assistance every month with filing reports and that he had difficulty with computers. Mr. Wurfel said that he was exhausted from working and that Paul Gaspar from the Maine Association of Police had taken over most of his lobbying responsibilities. Mr. Wurfel said that he thought April 15 was the last time he had to file a report.

Mr. Ketterer asked Mr. Wurfel if he was still a registered lobbyist. Mr. Wurfel replied that on January 1, the Professional Firefighters Association paid him for a year of lobbying. Mr. Wurfel said that he coordinated the lobbying campaign but not did actually lobby the legislature himself. Mr. Wurfel said that he would not continue in his lobbyist position in 2007.

Ms. Thompson asked Mr. Wurfel what action he would like the Commission to take. Mr. Wurfel said that he would like a waiver of the penalty, but he admits his guilt in filing the report late. Mr. Wurfel said that Martha Demeritt recommended he appear at the February Commission meeting, but he did not attend. Mr. Wurfel said that he would like a reconsideration of the earlier penalty. Mr. Wurfel said that the money to pay the penalties comes out of his personal funds and so he requested either a waiver or reduction of the penalties.

Ms. Thompson asked what the staff recommended after hearing Mr. Wurfel's explanation. Mr. Wayne said that lobbyists were usually assessed the statutory penalty amount. Mr. Wayne said that the Commission used to have a practice of reducing penalties in half for first instances of late filing. Mr. Wayne said that the Commission ended that practice in order to be more consistent in assessing penalties. Mr. Wayne said that the staff would not object to a lowering of Mr. Wurfel's penalty to \$50 or \$0 due to the fact that he would be paying with personal funds and had no intent to continue lobbying.

Ms. Gardiner said that she recalled a past instance where a lobbyist who was also a nurse asked for a waiver due to family and work obligations. Ms. Gardiner said that it was rare for the Commission to waive a late-filing penalty, but it could decide to do so.

Mr. Wurfel said that he wanted the Commission to hear his explanation and was not seeking special treatment.

Ms. Ginn Marvin asked Mr. Wurfel if he arranged for firefighters to visit the legislature. Mr. Wurfel said that he coordinated a large-scale lobbying effort that included an e-mail list. Mr. Wurfel said that he officially began as a lobbyist on January 3 but had done some work on a bill during the previous year before the bill was postponed. Mr. Wurfel said that he was paid about \$300 a month beginning in January 2006.

Ms. Thompson said that the law requires transparency from lobbyists. Ms. Thompson said that Mr. Wurfel had already missed one deadline and should have known to file the next report on time, or he should have had someone else file for him.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to assess a penalty of \$100 against Richard Wurfel.

Agenda Item #1 – Ratification of Minutes of the June 22, 2006 Meeting

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (3-0) to adopt the minutes of the June 22 meeting as amended.

Public Workshop on Constituent Newsletters

Mr. Wayne said that the Commission received complaints about newsletters sent by legislators to their constituents and neighbors. Mr. Wayne said that Mr. Ketterer suggested at the previous meeting that the Commission hold a public workshop on the issue. Mr. Wayne said that challengers complained that the newsletters unfairly aided incumbents, while the incumbents have said that the newsletters are not campaign-related. Mr. Wayne said there was also an issue where a candidate mailed newsletters outside his district and some argued it was a campaign expenditure. Mr. Wayne recommended that the Commission hear testimony and then decide whether clarifications are needed.

Millicent MacFarland introduced herself as the Clerk of the House. Ms. MacFarland said that each member of the House was allowed one district-wide mailing per legislative session. Ms. MacFarland said that it was possible for House members to choose not to send a newsletter during the first session and instead mail one up until March 1 of the second session, allowing them to send an additional mailing at the end of the second session. Ms. MacFarland said that the newsletters were funded by the House budget and administered by the Clerk's office. Ms. MacFarland said that an average of 4,200 pieces of mail are sent per district, costing around \$500 to print and \$700 to mail. Ms. MacFarland said that House members draft a newsletter or questionnaire with legislative aides. Ms. MacFarland said that the draft is sent to the Clerk's office, which reviews the newsletter. Ms. MacFarland said that the newsletters are required to be factual, cannot advocate for or against any referendum question, and cannot criticize or question

the motive of other House members. Ms. MacFarland said that in the event of inappropriate content, she would call the legislative aide who drafted the newsletter and provide suggestions for changes. Ms. MacFarland said that House members may appeal her decision to the Speaker of the House.

Ms. Thompson asked whether there were any issues of partisanship that Ms. MacFarland had encountered. Ms. MacFarland replied that while legislative aides and House members may not be happy with her decision, an agreement can usually be reached. Ms. MacFarland said that evaluating newsletters was a somewhat subjective process. Ms. MacFarland said that she tries to ensure the newsletters are fair and accurate while still getting their points across. Ms. MacFarland said that it was not appropriate in newsletters to question why House members voted the way they did. She said that the purpose of the newsletters was to present factual information to the constituents, allowing the public to make their own determinations.

Ms. Thompson asked if the minority party leadership ever disagreed with Ms. MacFarland's decision. Ms. MacFarland said that there was one occasion where a newsletter evaluated by her office strongly criticized party leadership and the legislative process. Ms. MacFarland said that the individual chose to send the newsletter out with personal funds.

Mr. Ketterer said that he was not aware that the newsletters were being reviewed by the Clerk or that House members had a right to appeal the decision. Ms. MacFarland said that the policy has been in place for over 20 years. Mr. Ketterer said that it seemed to be uniformly applied and that House members have an obligation to inform their constituents about legislative activities.

Mr. Ketterer said that a more difficult determination for the Commission would be whether a mailing outside of a legislator's district constitutes a campaign expenditure. Ms. MacFarland said that her role was to ensure that she only pay for newsletters mailed to individuals within a House member's district. Ms. MacFarland said it was difficult for mailhouses to prevent a small amount of overlap between districts. Ms. MacFarland said that when a House member's district comprises a specific town, it is easier to ensure the mail only goes to residents within that town. Ms. MacFarland said it was the policy of the House to not allow members to mail newsletters

outside their district en masse. Ms. MacFarland said that she compares the size of the mailing to the size of the district to enforce that policy. Ms. MacFarland said that it was rare that she had to investigate mailings outside the legislator's district.

Ms. Thompson asked if there had been instances of legislators sending mass mailings outside their districts. Ms. MacFarland replied that there had been some cases, including one earlier in the year. In that specific case, Ms. MacFarland said that she had difficulty contacting the mailhouse which sent the mailing and receiving the postage statements. Ms. MacFarland said that the Speaker of the House directed her to not pay the bill until she received the necessary information on the mailing. Ms. MacFarland said that the House member decided not to pay for the mailing with legislative funds.

Ms. Thompson asked what a mailhouse was and how it differed from a post office. Ms. MacFarland said that mailhouses both print and mail materials. Ms. MacFarland said that the House had contracts with Atkins Printing and Bangor Letter Shop.

Ms. Thompson said there appeared to be oversight by the Clerk over both the content of the newsletters and the mailing process. Ms. Thompson said that such information might be useful if the Commission received complaints about newsletters. Ms. MacFarland said that House members also have approached her with complaints about other members' newsletters.

Ms. Ginn Marvin asked how often Ms. MacFarland found inappropriate newsletters. Ms. MacFarland replied that there was an average of three to five problematic newsletters per session. Ms. MacFarland said that the House members did not appeal her decision in most cases.

Ms. Ginn Marvin asked if House members could choose their own mailhouse. Ms. MacFarland said they could either use Atkins Printing, with which the House has a contract, or another mailhouse of the legislator's choosing. Ms. MacFarland said that House members sometimes prefer to use their local printer and then send the materials to Atkins Printing for mailing. Ms. MacFarland said that the House will reimburse the mailhouse at the contract rate that the House

has with Atkins Printing, with the member covering anything over the contract rate with their personal funds.

Ms. Ginn Marvin asked how the use of personal funds toward newsletters might affect candidates under the Clean Election restrictions. Mr. Wayne replied that since the funds are not being used for campaign purposes, they do not have to be reported.

Ms. Ginn Marvin asked if the House had any deadlines for sending constituent newsletters. Ms. MacFarland said that House members with opponents in the primary election had a deadline of March 1. Ms. MacFarland said that even though the March 1 date fell before the deadline to register as a candidate with the Secretary of State's office, most candidates knew if they would be facing opposition in the primary. Ms. MacFarland said that exceptions were granted if candidates did not know if they would be opposed. Ms. MacFarland said that House members expecting to have an opponent in the general election were expected to have their mailings out by the day of the primary election. Ms. MacFarland said that this requirement can be difficult to enforce due to the low priority the U.S. Postal Service gives to the newsletters compared to political mail, resulting in people receiving the newsletters several weeks after the primary. Ms. MacFarland said that House members who were unopposed in the general election may mail their newsletters up until 60 days before the general election. Ms. MacFarland said that those not running for reelection must send newsletters by the primary election. Ms. MacFarland said that this deadline is due to instances of legislators including in their newsletters pictures of the candidate running for their seat.

Joy O'Brien introduced herself as the Secretary of the Senate. Ms. O'Brien said that unlike the House, Senate does not reimburse members who use their own mailhouses. Ms. O'Brien said that the Senate contracts with a mailhouse to send out all constituent newsletters at one time. Ms. O'Brien said that this system allows for greater oversight on what is being mailed and when. Ms. O'Brien said that the leadership staff meets at the end of the session to decide on a date for the mailing, working within the parameters of the mailhouse. Ms. O'Brien said that a mailing for a typical district comprises between 16,000 and 21,000 pieces and are a standard size. Ms. O'Brien said that none of the newsletters are sent out before the primary but usually go out soon

after the primary. Ms. O'Brien said it could be difficult mailing to addresses within towns split between two districts. Ms. O'Brien said that her office works with the post offices to determine who should receive which candidate's newsletter. Ms. O'Brien said that the contents of the newsletters were partisan but not political. Ms. O'Brien said that the Senate allows its members to communicate their political philosophy with their constituents via the newsletters. Ms. O'Brien said it could be difficult to distinguish between partisan content and campaign-related messages. Ms. O'Brien said that each member of the Senate was allowed 50 pieces of ordinary mail to constituents per day. Ms. O'Brien said that the Senate has, in the past, allowed Senate members to send mass mailings outside their district to address important issues. Ms. O'Brien said that in issues of redistricting, the Senate has only allowed its members to send mail to their current districts and not to the newly apportioned districts. Ms. O'Brien said that any regulation on incumbent candidates sending newsletters outside their current districts should come from the Commission rather than being part of the newsletter oversight in the legislature.

Ms. Ginn Marvin asked about partisan website addresses being included in the newsletters. Ms. O'Brien responded that the official Senate website provides links to party websites. Ms. O'Brien said that the .org website address included in some newsletters is hosted by InforME, which also hosts the official Senate website. Ms. O'Brien said that the same rules against campaign content apply to the .org site that apply to newsletters.

Ms. Ginn Marvin asked if there were any requirements for members to include a "paid for" disclosure statement on the newsletters. Ms. O'Brien replied that the Senate had no such requirement, but the parties sometimes decided on a requirement for their members.

Ms. Ginn Marvin asked whether the surveys on constituent newsletters were used for campaign purposes. Ms. O'Brien replied that the surveys were instead used to find out which matters were important to constituents.

Ms. Ginn Marvin asked if the use of a single mailhouse allows for easier Senate oversight of constituent mailings than the system used by the House. Ms. O'Brien said that the Senate uses their arrangement with the mailhouse to make sure that legislative funds are not used to pay for

mailings outside a member's district. Ms. O'Brien said the total bill was around \$165,000, but consolidating the mailings allows for greater control over the timing and destinations of the mailings. Ms. O'Brien said that the presiding officer and members of leadership have the ability to meet and change the rules governing the mailings.

Alison Smith said that she was representing Maine Citizens for Clean Elections. Ms. Smith read a statement expressing the right of the public to know who paid for and mailed campaign communications. Ms. Smith said that the determination of campaign literature relies on a purpose test, which makes mailings outside a legislator's district campaign-related. Ms. Smith said that while the Commission may wish to clarify its rules, there was a strong need for enforcement during the current election cycle. Ms. Smith said that the Commission should reconsider its lack of action against Rep. Glynn at its previous meeting.

Kitty Breskin said that she was working for the campaign of a House candidate from Boothbay Harbor. Ms. Breskin said that both her candidate and his opponent were Clean Election candidates, with the opponent able to exceed the spending restrictions by having the incumbent legislator in his district include mentions of him in his constituent newsletter. Ms. Breskin said the photograph of the incumbent and his chosen successor did not expressly advocate for his election, but did say he was working for the good of the community. Ms. Breskin said that she was not making a formal complaint to the Commission, but was concerned about the use of constituent newsletters to get around the restrictions of the Clean Election Act.

Ms. Thompson asked if it was a House newsletter. Ms. Ginn Marvin said that the newsletter was paid for with state funds.

Ms. Thompson asked if the person in the photograph was, in fact, a candidate when the newsletter was mailed. Ms. Breskin replied that he was.

Ms. Thompson asked if the Clerk of the House had any concerns about the newsletter when it came through her office. Ms. MacFarland said that the Clerk's office did not recognize that the photograph depicted a candidate for the House. Ms. MacFarland said that if she had known he

was a candidate, she would have spoken with the House Republican office, telling them that it was not allowed.

Ms. Thompson said it may be a difficult determination if the person mentioned in the newsletter decided to become a candidate after the newsletter was mailed. Ms. Thompson asked if the existing law was inadequate or if the issue was not something that could be regulated. Ms. Thompson asked if a change to the law would prevent people from running for office if they previously appeared in a constituent newsletter.

Mr. Ketterer said that it would be difficult for the Clerk to determine whether any candidates were mentioned or depicted in the newsletters, but they could require legislators to indicate this when they present the newsletters for approval. Mr. Ketterer said that many people running for office are also well-known community leaders who would be likely to appear with incumbent legislators.

Ms. Thompson asked Ms. Breskin if she had any suggested solutions. Ms. Breskin said that she was presenting the issue as a problem with the Clean Elections system, but did not have any specific suggestions.

Ms. Ginn Marvin said that the problem could likely be solved by requiring legislators to certify that no photographs of current candidates appear in their newsletters.

Dan Billings said that he represented Rep. Glynn at the previous Commission meeting and also represented the Woodcock for Governor campaign. Mr. Billings said that he received a newsletter from Rep. Hutton, which includes slogans and partisan comments. Mr. Billings said that they are political communications and do not represent objective information on the government. Mr. Billings said that it was not a workable rule to forbid mailings outside a legislator's district, being that it would be unfair to incumbents and a violation of First Amendment rights. Mr. Billings said that the purpose test was not useful since there could be many different purposes involved in a mailing. Mr. Billings said that the direct advocacy test was a more appropriate standard, objectively judging campaign materials based on whether they

directly advocate for a candidate's election or defeat. Mr. Billings said that there may be legitimate reasons for candidates to appear in a constituent newsletter. Mr. Billings said that if the purpose test was used, many press conferences given by Gov. Baldacci could have been considered to be campaign expenditures. Mr. Billings said that objective evidence such as the contents of the communications should be considered rather than the intent.

Ms. Gardiner asked Mr. Billings if he would support a recommendation to the legislature that constituent newsletters not be mailed within 21 days of an election. Mr. Billings said that under the current law, matching funds for Clean Election candidates should be triggered by any independent expenditures made within 21 days of an election, including constituent newsletters. Mr. Billings said that providing matching funds would be preferable to placing limits on when the newsletters could be mailed.

Ms. Gardiner asked if the legislature would fit the definition of "person" in the statute regarding independent expenditures. Mr. Billings replied that it could be considered a "group or organization" and fall under the definition.

Kate Brogan introduced herself as being legal counsel to the President of the Senate. Ms. Brogan expressed her concern that if the express advocacy standard was used exclusively that Clean Election candidates could spend private money to send communications that circumvented that standard. Ms. Brogan said there should be recognition that all mailings from a candidate during certain times are campaign-related. Ms. Brogan said that it was not unreasonable for the Commission to judge intent in mailings.

Mr. Wayne asked if there was confusion among legislators about what would constitute campaign-related mailings. Ms. Brogan said that legislators and voters knew campaign-related activity when they saw it.

Mr. Wayne said that the Commission could give the staff direction and change its rules after the election. Mr. Wayne said that the issues raised were whether an incumbent's mailing within his

own district should be considered a campaign expense and whether mailings outside a legislator's district should be treated as a campaign expense.

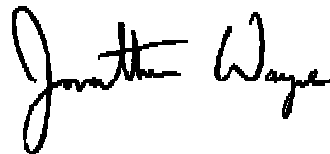
Ms. Ginn Marvin recommended that the Commission members give their feedback to Mr. Wayne and take up the issues at a future meeting.

Ms. Thompson asked that the staff summarize the complaints raised about constituent mailings and the effects of possible rule changes. Mr. Wayne agreed to present this information at the August 23 meeting.

Ms. Ginn Marvin invited members of the public to attend the next meeting on August 23 at 9 a.m.

There being no further business, Mr. Ketterer moved, Ms. Thompson seconded and the Commission unanimously voted (3-0) to adjourn.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne

Executive Director